

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WOOLWORTHS NASHVILLE, LLC,)	
d/b/a Woolworths on 5th,)	
)	
Plaintiff,)	
)	Case No.: 3:20-cv-00396
v.)	
)	
THE CINCINNATI INSURANCE COMPANY,)	
THE CINCINNATI CASUALTY COMPANY, and)	
THE CINCINNATI INDEMNITY COMPANY,)	
)	
Defendants.)	

**THE CINCINNATI DEFENDANTS' MOTION
TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(6)**

Pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), Defendants, The Cincinnati Insurance Company ("Cincinnati"), The Cincinnati Casualty Company and The Cincinnati Indemnity Company (collectively "Cincinnati"), by their attorneys, respectfully moves this Court for an order dismissing all claims asserted against Cincinnati by Plaintiff for failure to state a claim upon which relief can be granted. In support of this Motion, Cincinnati relies on all pleadings and filings of record and Cincinnati's contemporaneously-filed The Cincinnati's Memorandum in Support of their Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6), to establish that:

1. There is no coverage for Plaintiff's claim because it was not the result of "direct physical loss. *Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App. 3d 23, 2008-Ohio-311, 884 N.E.2d 1130, ¶ 68 (8th Dist) (Stewart, J.); *Source Food Technology, Inc. v. U.S. Fidelity & Guarantee Co.*, 465 F. 3d 834, 838 (8th Cir. 2006) (Minn.); *Philadelphia Parking Authority v. Federal Insurance Co.*, 385 F.Supp.2d 280, 289 (S.D.N.Y. 2005); *S.E. Mental Health Ctr., Inc. v. P. Ins. Co., Ltd.*, 439 F.Supp.2d 831, 837 (W.D. Tenn. 2006).

2. The absence of a virus exclusion does not mean that virus related losses are covered. *Blaine Constr. Corp. v. Ins. Co. of N. Am.*, 171 F.3d 343, 349 (6th Cir. 1999); *Hartford Life & Acc. Ins. Co.*, 2006 WL 2801878, *13 (M.D. Fla. 2006).

3. In addition to there be no direct physical loss as required for coverage under the “Civil Authority” clause, there is also no coverage under the “Civil Authority” clause because access to the area immediately surrounding the property was not prohibited by civil authority as a result of damage and there was no action of civil authority taken in response to dangerous physical conditions resulting from a direct physical loss. *Paradies Shops, Inc. v. Hartford Fire Ins. Co.*, 2004 WL 5704715, at *1-2, *6 (N.D. Ga. Dec. 15, 2004); *Davidson Hotel Co. v. St. Paul Fire and Marine Ins. Co.*, 136 F.Supp.2d 901, 912 (W.D. Tenn. 2001); *Kean, Miller, Hawthorne, D'Armond McCowan & Jarman, LLP v. Nat'l Fire Ins. Co. of Hartford*, 2007 WL 2489711, at *4-5 (M.D. La. Aug. 29, 2007); *Syufy Enters. v. Home Ins. Co. of Ind.*, 1995 WL 129229, at *2 (N.D. Cal. Mar. 21, 1995); *Brothers, Inc. v. Liberty Mut. Fire Ins. Co.*, 268 A.2d 611, 614 (D.C. 1970).

WHEREFORE, Defendant Cincinnati moves this Court to grant this Motion to Dismiss in its favor and against Plaintiff, and to grant Cincinnati such other and further relief as this Court deems just.

Respectfully submitted,

s/ Curtis L. Campbell
PARKS T. CHASTAIN
Registration No. 13744
DIRECT: (615) 630-7717
(615) 256-8787, Ext. 114
pchastain@bkblaw.com
E. JASON FERRELL
Registration No. 24425
DIRECT: (615) 630-7716
(615) 256-8787, Ext. 116
jferrell@bkblaw.com
CURTIS L. CAMPBELL

Registration No. 37515
DIRECT: (615) 630-7715
(615) 256-8787, Ext. 115
ccampbell@bkblaw.com
Attorneys for the Defendants, The Cincinnati Insurance
Company, The Cincinnati Casualty Company, and The
Cincinnati Indemnity Company

BREWER, KRAUSE, BROOKS & CHASTAIN, PLLC
545 Mainstream Drive, Suite 101
Nashville, TN 37228

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July 2020, a true and correct copy of the THE CINCINNATI DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(6) was filed electronically. Notice of this filing will be sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. Mail. Parties may access this file through the court's electronic filing system.

T. Roe Frazer II, Esquire
Patrick D. McMurtray, Esquire
Thomas Roe Frazer III, Esquire
Frazer, PLC
30 Burton Hills Blvd., Suite 450
Nashville, TN 37215

s/ Curtis L. Campbell
CURTIS L. CAMPBELL

CLC: